

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL DAYNE BRIDGEMAN,
CDCR #AD-9461,

Plaintiff,

RECORDS CLERK, R.J. Donovan
Correctional Facility; TRUST ACCOUNT
CLERK; GEORGE A. NEOTTI, Warden,

Defendants.

Civil No. 11cv0390 IEG (BLM)

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*,
IMPOSING NO INITIAL PARTIAL
FILING FEE, GARNISHING \$350.00
BALANCE FROM PRISONER'S
TRUST ACCOUNT [ECF No. 2]; and**

**(2) DISMISSING COMPLAINT
FOR FAILING TO STATE A
CLAIM PURSUANT TO 28 U.S.C.
§§ 1915(e)(2) AND 1915A(b)**

Michael Dayne Bridgeman (“Plaintiff”), a state prisoner currently incarcerated at the R.J. Donovan Correctional Facility (“RJD”) located in San Diego, California, and proceeding pro se, has submitted a civil action pursuant to 42 U.S.C. § 1983. Additionally, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [ECF No. 2].

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I.

MOTION TO PROCEED IFP [ECF No. 2]

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, prisoners granted leave to proceed IFP remain obligated to pay the entire fee in installments, regardless of whether their action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act (“PLRA”), a prisoner seeking leave to proceed IFP must submit a “certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the six-month period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial payment of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the average monthly balance in the account for the past six months, whichever is greater, unless the prisoner has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner must collect subsequent payments, assessed at 20% of the preceding month’s income, in any month in which the prisoner’s account exceeds \$10, and forward those payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2).

23 The Court finds that Plaintiff has no available funds from which to pay filing fees at this
24 time. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited
25 from bringing a civil action or appealing a civil action or criminal judgment for the reason that
26 the prisoner has no assets and no means by which to pay the initial partial filing fee.”); *Taylor*,
27 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing
28 dismissal of a prisoner’s IFP case based solely on a “failure to pay ... due to the lack of funds

1 available to him when payment is ordered.”). Therefore, the Court **GRANTS** Plaintiff’s Motion
2 to Proceed IFP [ECF No. 2] and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1).
3 However, the entire \$350 balance of the filing fees mandated shall be collected and forwarded
4 to the Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.
5 § 1915(b)(1).

II.

INITIAL SCREENING PER 28 U.S.C. §§ 1915(e)(2)(b)(ii) and 1915A(b)(1)

8 Notwithstanding IFP status or the payment of any partial filing fees, the Court must
9 subject each civil action commenced pursuant to 28 U.S.C. § 1915(a) to mandatory screening
10 and order the sua sponte dismissal of any case it finds “frivolous, malicious, failing to state a
11 claim upon which relief may be granted, or seeking monetary relief from a defendant immune
12 from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir.
13 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v.*
14 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not
15 only permits but requires” the court to sua sponte dismiss an *in forma pauperis* complaint that
16 fails to state a claim).

17 Before its amendment by the PLRA, former 28 U.S.C. § 1915(d) permitted sua sponte
18 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1130. However, as
19 amended, 28 U.S.C. § 1915(e)(2) mandates that the court reviewing an action filed pursuant to
20 the IFP provisions of section 1915 make and rule on its own motion to dismiss before directing
21 the U.S. Marshal to effect service pursuant to FED.R.CIV.P. 4(c)(3). See *Calhoun*, 254 F.3d at
22 845; *Lopez*, 203 F.3d at 1127; see also *McGore v. Wrigglesworth*, 114 F.3d 601, 604-05 (6th Cir.
23 1997) (stating that sua sponte screening pursuant to § 1915 should occur “before service of
24 process is made on the opposing parties”).

25 “[W]hen determining whether a complaint states a claim, a court must accept as true all
26 allegations of material fact and must construe those facts in the light most favorable to the
27 plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *Barren*, 152 F.3d at 1194
28 (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

1 Andrews, 398 F.3d at 1121. In addition, the Court has a duty to liberally construe a pro se's
 2 pleadings, *see Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988),
 3 which is "particularly important in civil rights cases." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261
 4 (9th Cir. 1992). In giving liberal interpretation to a pro se civil rights complaint, however, the
 5 court may not "supply essential elements of claims that were not initially pled." *Ivey v. Board*
 6 *of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

7 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person
 8 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived
 9 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the
 10 United States. *See* 42 U.S.C. § 1983; *Nelson v. Campbell*, 541 U.S. 637, 124 S.Ct. 2117, 2122
 11 (2004); *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

12 While Plaintiff's Complaint is far from clear, it appears that he is alleging that the RJD
 13 Trust Account office failed to provide him with funds normally provided to inmates when they
 14 are released on parole. Where an inmate alleges the deprivation of a liberty or property interest
 15 caused by the unauthorized negligent or intentional action of a prison official, the prisoner
 16 cannot state a constitutional claim where the state provides an adequate post-deprivation remedy.
 17 *See Zinermon v. Burch*, 494 U.S. 113, 129-32 (1990); *Hudson v. Palmer*, 468 U.S. 517, 533
 18 (1984). The California Tort Claims Act ("CTCA") provides an adequate post-deprivation state
 19 remedy for the random and unauthorized taking of property. *Barnett v. Centoni*, 31 F.3d 813,
 20 816-17 (9th Cir. 1994). Thus, Plaintiff has an adequate state post-deprivation remedy and his
 21 claims relating to the taking of his property are not cognizable in this § 1983 action, and must
 22 be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1). Accordingly, the Court
 23 finds that Plaintiff's Complaint fails to state a section 1983 claim upon which relief may be
 24 granted, and is therefore subject to dismissal pursuant to 28 U.S.C. §§ 1915(e)(2)(b) &
 25 1915A(b). The Court will provide Plaintiff with an opportunity to amend his pleading to cure
 26 the defects set forth above. Plaintiff is warned that if his amended complaint fails to address the
 27 deficiencies of pleading noted above, it may be dismissed with prejudice and without leave to
 28 amend.

III.

CONCLUSION AND ORDER

Good cause appearing, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) [ECF No. 2] is **GRANTED**.

6 2. The Secretary of California Department of Corrections and Rehabilitation, or his
7 designee, shall collect from Plaintiff's prison trust account the \$350 balance of the filing fee
8 owed in this case by collecting monthly payments from the account in an amount equal to twenty
9 percent (20%) of the preceding month's income and forward payments to the Clerk of the Court
10 each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).
11 ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
12 ASSIGNED TO THIS ACTION.

13 3. The Clerk of the Court is directed to serve a copy of this Order on Matthew Cate,
14 Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,
15 Sacramento, California 95814.

IT IS FURTHER ORDERED that:

17 4. Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
18 §§ 1915(e)(2)(b) and 1915A(b). However, Plaintiff is **GRANTED** thirty (30) days leave from
19 the date this Order is "Filed" in which to file a First Amended Complaint which cures all the
20 deficiencies of pleading noted above. Plaintiff's Amended Complaint must be complete in itself
21 without reference to the superseded pleading. *See S.D. Cal. Civ. L. R. 15.1.* Defendants not
22 named and all claims not re-alleged in the Amended Complaint will be deemed to have been
23 waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Further, if Plaintiff's Amended
24 Complaint fails to state a claim upon which relief may be granted, it may be dismissed without
25 further leave to amend and may hereafter be counted as a "strike" under 28 U.S.C. § 1915(g).
26 *See McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

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5. The Clerk of Court is directed to mail a form § 1983 complaint to Plaintiff.

IT IS SO ORDERED.

DATED: 3/22/11

Irma E. Gonzalez
HON. IRMA E. GONZALEZ, T.D.A.

HON. IRMA E. GONZALEZ, Chief Judge
United States District Court